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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP—Chairman
 GARY PIERCE
 BRENDA BURNS
 BOB BURNS
 SUSAN BITTER SMITH

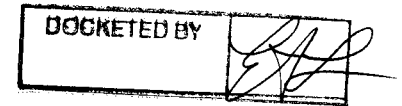
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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUL 9 2014



ORIGINAL

IN THE MATTER OF THE APPLICATION
 OF JOHNSON UTILITIES, L.L.C. FOR AN
 EXTENSION OF ITS CERTIFICATE OF
 CONVENIENCE AND NECESSITY FOR
 WATER AND SEWER SERVICES.

DOCKET NO. WS-02987A-12-0136

RESPONSE TO STAFF'S STATUS
 UPDATE

AND
 NOTICE OF FILING APPROVALS TO
 CONSTRUCT FOR BELLA VISTA
 FARMS PHASE ONE

In a procedural order dated June 25, 2014, the Administrative Law Judge ("ALJ") directed Utilities Division Staff ("Staff") to update and clarify its position and rationale regarding certain issues in this docket, and Staff filed its status update on July 2, 2014. The ALJ also directed Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") to file a response to Staff's filing by July 9, 2014. In accordance with the procedural order, Johnson Utilities hereby files its response to Staff's Status Update. In addition, the Company files as Attachment 1 hereto copies of the Approvals to Construct ("ATCs") issued by the Arizona Department of Environmental Quality ("ADEQ") for the sewage collection system and the water system needed to serve Bella Vista Farms Phase One.

RESPONSE TO STAFF'S STATUS UPDATE

In its Closing Brief filed May 22, 2013, Staff argued that Johnson Utilities had not established that two Notices of Violation ("NOVs") issued by ADEQ in October and November of 2012 had been closed. Later, Staff acknowledged in its Supplement to Closing Brief filed June 17, 2013, that the two NOVs had, in fact, been closed by ADEQ. However, Staff noted that two additional NOVs were issued to Johnson Utilities on May 30, 2013. These were NOV

1 140548 (San Tan Water Reclamation Plant, Place ID 18584) and NOV 140757 (Johnson
2 Utilities Company, Place ID 114360). Thus, Staff argued that Johnson Utilities remained out of
3 compliance with ADEQ and that an order preliminary was still appropriate for the entire
4 requested extension area based upon the alleged non-compliance.

5 Staff's current recommendations in this docket are set forth in Staff's Notice of Filing
6 Reply ("Reply") dated August 6, 2013. In its Reply, Staff states that "[b]ecause of the issuance
7 of additional Notices of Violation ... from the Arizona Department of Environmental Quality...,
8 Staff recommends that all areas requested in the application be granted subject to an Order
9 Preliminary...." Staff continues, "[w]hen the Company resolves the NOVs, Staff recommends
10 that the Company receive conditional CC&Ns for all requested extension areas except Merrill
11 Ranch Expansion One Units 59A, 59C, 59D, and 59E."¹

12 On September 20, 2013, Johnson Utilities filed its Motion for Leave to Late-File
13 Comments on Staff's Modified Recommendations as set forth in Staff's Reply and Notice of
14 Filing Letters from ADEQ Resolving Notices of Violation ("Motion and Notice"). Attached as
15 Attachments 1 and 2 to the Motion and Notice were copies of two letters each dated August 12,
16 2013, from ADEQ expressly acknowledging that Johnson Utilities had met the "documenting
17 compliance" provisions of NOV 140548 and NOV 140757. However, after reviewing the letters
18 from ADEQ included in the Company's Motion and Notice, Staff stated in its October 17, 2013,
19 response that "Staff's position remains the same as set forth in its recommendations stated in its
20 Reply: the additional information submitted by the Company does not warrant issuance of
21 Certificates of Convenience and Necessity ("CC&Ns") with conditions rather than Orders
22 Preliminary."² Staff continued:

23 [A]s to the letters from ADEQ submitted by the Company, Staff would note that
24 these letters do not affirmatively state that the outstanding Notices of Violation ...
25 have been fully resolved. In order for Staff to reach that conclusion, Staff would

26
27 ¹ Staff's Notice of Filing Reply (August 6, 2013) at pp. 1-2.

28 ² Staff's Response to Motion for Leave to Late-File Comments on Staff's Modified Recommendations as
set forth in Staff's Reply and Notice of Filing Letters from ADEQ Resolving Notices of Violation
(October 17, 2013 at p. 1, lines 21-25).

1 need to see a Drinking Water Compliance Status Report and a Waste Water
2 Compliance Report so indicating.”³

3 On July 1, 2014, Johnson Utilities filed in this docket copies of Wastewater Compliance
4 Status Reports for its four operating wastewater treatment plants and Drinking Water
5 Compliance Status Reports for its two public water systems, and in all cases ADEQ found that
6 the Company was either in compliance or was not in violation at a level at which ADEQ will
7 take action or issue an NOV. Specifically, the reports show the following:

WASTEWATER COMPLIANCE STATUS REPORT		
FACILITY NAME	DATE	COMPLIANCE STATUS
Anthem at Merrill Ranch WRP	1/31/2014	ADEQ has determined that as of this date this facility is currently in compliance.
Santan WRP	1/31/2014	ADEQ has determined that this facility is not currently in violation at a level at which ADEQ will take an action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment.
Section 11 WWTP	1/31/2014	ADEQ has determined that as of this date this facility is currently in compliance.
Pecan WWTP	1/31/2014	ADEQ has determined that this facility is not currently in violation at a level at which ADEQ will take an action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment.
DRINKING WATER COMPLIANCE STATUS REPORT		
SYSTEM NAME	DATE	COMPLIANCE STATUS
Anthem at Merrill Ranch	2/7/2014	ADEQ has determined that this system is currently delivering water that meets water quality standards.
Johnson Utilities	2/7/2014	ADEQ has determined that this system is currently delivering water that meets water quality standards. ⁴

26 ³ *Id.* at pp. 1-2 (emphasis added).

27 ⁴ The Company notes that the February 7, 2014, Drinking Water Compliance Status Report for the
28 Johnson Utilities public water system supersedes the October 10, 2013, report that was filed by Staff with its October 17, 2013, filing which stated that ADEQ could not determine at that time whether the Company was delivering water that met applicable drinking water standards.

1 The compliance letters from ADEQ filed with the Company's September 20, 2013,
2 Motion and Notice expressly acknowledging that Johnson Utilities has met the "documenting
3 compliance" provisions of NOV 140548 and NOV 140757 and the compliance status reports
4 filed by the Company on July 1, 2014, conclusively show that the Company's water and
5 wastewater systems are in compliance with ADEQ requirements. There can be no reasonable
6 debate on this point. In Staff's Status Update, Staff states that it "has not had the time to review
7 [the July 1, 2014] filing nor evaluate how, if at all, it affects Staff's position."⁵ Johnson Utilities
8 believes that Staff should be able to easily evaluate the July 1, 2014, filing to verify the
9 Company's representations regarding its compliance status as set forth herein and then file a
10 supplemental status update in this docket.

11 Johnson Utilities notes that Pulte Home Corporation ("Pulte"), the developer of Anthem
12 at Merrill Ranch, filed comments in this docket on October 7, 2013, urging the Commission to
13 issue a conditional certificate of convenience and necessity rather than an order preliminary.
14 Specifically, Pulte stated as follows:

15 We are very concerned ... with recommendations made by the Commission's
16 Staff in this case to issue "Order Preliminaries" rather than conditional CC&Ns.
17 The issuance of an Order Preliminary does not provide the desired certainty to
18 landowners that there is a water and sewer provider with a CC&N available to
19 serve the property. Johnson Utilities' CC&N extension application was supported
20 by requests from landowners for service. Landowners have requested that a
21 CC&N for water and sewer service be issued now, not later.⁶

22 For the reasons that are explained in the Company's (i) Response to Staff's Closing Brief
23 and Supplement to Closing Brief dated July 8, 2013, (ii) its Motion and Notice dated September
24 20, 2013, and (iii) this Response to Staff's Status Update, Johnson Utilities opposes Staff's
25 recommendation that the Commission issue an order preliminary for all of the areas covered by
26 the application in this docket. Staff's recommendation that all areas requested in the application
27 be granted subject to an order preliminary on the grounds that Johnson Utilities is not in
28 compliance with ADEQ requirements should be rejected because the Company has shown that it
is in compliance. Thus, Johnson Utilities urges the Commission to reject recommendations 1,

⁵ Staff's Status Update (July 2, 2014) at p. 1, lines 17-18.

⁶ Letter from Michele Van Quathem dated October 7, 2013 at p. 2 (emphasis in original).

2 (the Company has already complied with this recommendation), 4 and 5 of Staff's August 6, 2013 Reply, and that recommendation 3 be combined with recommendation 8 as a condition of a conditional CC&N. As set forth in the Company's September 20, 2013 Motion and Notice, Johnson Utilities does not oppose the inclusion of recommendations 6, 7 and 8 in a conditional CC&N.

Johnson Utilities has attached as Attachment 1 copies of the ATCs issued by ADEQ for the sewage collection system and the water system needed to serve Bella Vista Farms Phase One. Accordingly, the Company requests that the Commission delete that portion of recommendation 7 requiring the submission of ATCs for Bella Vista Farms Phase One by August 1, 2014. In addition, due to the length of time that has elapsed since the application was filed in this docket, the Company requests that the Commission extend the remaining compliance dates in recommendation 7 and all of the compliance dates in recommendation 8 by 2 years.

If the Commission elects to issue an order preliminary in this case, it should be limited to only Merrill Ranch Expansion One Units 59A, 59C, 59D and 59E. In such case, recommendation 1 in Staff's August 6, 2013 Reply should be limited to Merrill Ranch Expansion One Units 59A, 59C, 59D and 59E, and recommendation 2 should be eliminated entirely since the Company has already complied with the recommendation. The Company requests that the compliance dates included in recommendation 3 be extended by two years.

RESPECTFULLY submitted this 9th day of July, 2014.

BROWNSTEIN HYATT FARBER SCHRECK LLP



Jeffrey W. Crockett, Esq.
One East Washington Street, Suite 2400
Phoenix, Arizona 85004
Attorneys for Johnson Utilities, L.L.C.

1 ORIGINAL and thirteen (13) copies of the
2 foregoing filed this 9th day of July, 2014, with:

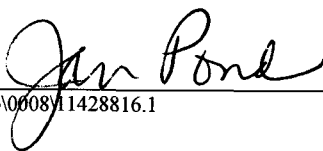
3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered
8 this 9th day of July, 2014, to:

9 Lyn Farmer, Chief Administrative Law Judge
10 Hearing Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Janice Alward, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Steve Olea, Director
20 Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007

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ATTACHMENT 1



CONSTRUCTION AUTHORIZATION

FOR A SEWAGE COLLECTION SYSTEM
TYPE 4.01 GENERAL PERMIT

Applicant Information:		County: Pinal	
Name: Central Arizona College		ADEQ File No.: 20120180	
Address: 8470 North Overfield Road Coolidge, AZ 85128-9030		Project Name: Central Arizona College - San Tan Campus Phase 1	
		LTF #: 56864	
Project Type(s)		Project Location: This project is located at: Northeast corner of intersection Bella Vista Road & Union Pacific Railroad east of Gantzel Road.	
<input checked="" type="checkbox"/> Gravity		Project Description: Installation of approx. 1,086 LF of 10-inch PVC gravity sewer lines, 1,340 LF of 8-inch PVC gravity sewer lines with 09 manholes and related appurtenances.	
<input type="checkbox"/> Lift Station			
<input type="checkbox"/> Force Main			
<input type="checkbox"/> Other:			
Design Documents Approved for Construction		Treatment Facility Permitted Design Flow: 2.0 MGD	
		System Capacity Affirmation Date: 8/29/12	
Document	Date	APP Number 103081	
Notice of Intent to Discharge	9/12/12	Sewage Collection System Capacity Affirmation Date: 8/29/12	
Site Plan	6/27/12	Location of Downstream End of System Proposed Herein:	
Design Plan	9/14/12	Township 3S	Range 8E
Operation & Maintenance Plan	W/ADEQ	Section 15	1/4 1/4 1/4
Design Report	9/14/12	Latitude 33 ° 09 ' 52 " N	
		Longitude 111 ° 31 ' " W	
		Description of Area Served by Project:	
<p>Construction Authorization: This Construction Authorization is issued in accordance with Arizona Administrative Code (A.A.C.) Title 18, Chapter 9, Article 3, Part A, Section A301. The applicant is authorized to construct the facility at the location specified herein under terms and conditions of the requested general permit and applicable requirements of Arizona Revised Statutes Title 49, Chapter 2, and A.A.C. Title 18, Chapter 9. The applicant has two years from the approval date of this document to complete construction and submit the applicable verification documents specified in A.A.C. R18-9-E301(E). Construction shall conform with the approved design documents.</p>			
 Tanveer Faiz, P.E.		Environmental Engineer, WQD - Groundwater Section Title	
		10/17/12 Date	

Reviewer: ASB
ERP: 12:0238

REVISED MARCH 2006



ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
CERTIFICATE OF APPROVAL TO CONSTRUCT
WATER FACILITIES

Page 1 Of 2

ADEQ File No: 20120180	LTF No: 56865
System Name: Johnson Utilities	System Number: 11-128
Project Owner: Central Arizona College	
Address: 8470 N Overfield Rd, Coolidge, AZ 85128	
Project Location: San Tan	County: Pinal
Description: CENTRAL ARIZONA COLLEGE-SAN TAN CAMPUS PHASE I. ATC PERMIT FOR APPROXIMATELY 4,500 LF OF 12-INCH, 1,800 LF OF 6-INCH, 400 LF OF 4-INCH C900 PVC & 200 LF OF 3-INCH SCH 80 PVC AND 260 LF OF 6-INCH DIP WATER & FIRELINES AND RELATED FITTINGS.	

Approval to construct the above-described facilities as represented in the approved documents on file with the Arizona Department of Environmental Quality is hereby given subject to provisions 1 through 5 continued on page 2 through 2

1. This project must be constructed in accordance with all applicable laws, including Title 49, Chapter 2, Article 9 of the Arizona Revised Statutes and Title 18, Chapter 5, Article 5 of the Arizona Administrative Code.
2. Upon completion of construction, the engineer shall fill out the Engineer's Certificate of Completion and forward it to the Central Regional Office located in Phoenix. If all requirements have been completed, that unit will issue a Certificate of Approval of Construction. R18-5-507(B), Ariz. Admin. Code. At the project owner's request, the Department may conduct the final inspection required pursuant to R18-5-507(B); such a request must be made in writing in accordance with the time requirements of R18-5-507(C), Ariz. Admin. Code.
3. This certificate will be void if construction has not started within one year after the Certificate of Approval to Construct is issued, there is a halt in construction of more than one year, or construction is not completed within three years of the approval date. Upon receipt of a written request for an extension of time, the Department may grant an extension of time; an extension of time must be in writing. R18-5-505(E), Ariz. Admin. Code.
4. Operation of a newly constructed facility shall not begin until a Certificate of Approval of Construction has been issued by the Department. R18-5-507(A), Ariz. Admin. Code.

Reviewed by: FMS

By: Janak K. Desai FOR JKD 10/16/12
Janak K. Desai, P.E. Unit Manager Date
Engineering Review Section
Water Quality Division

cc: File No: 20120180
Regional Office: Central
Owner: Central Arizona College
County Health Department: Pinal
Engineer: Dowl Hkm
Planning and Zoning/Az Corp. Commission
Engineering Review Database - Etr021

**APPROVAL TO CONSTRUCT
POTABLE WATERLINE
ADEQ FILE No. 20120180
PAGE 2 OF 2: PROVISIONS CONTINUED**

5. The Arizona Department of Environmental Quality's review of this application was subject to the requirements of the licensing time frames ("LTF") statute under Arizona Revised Statutes ("A.R.S.") § 41-1072 through § 41-1079 and the LTF rules under Arizona Administrative Code ("A.A.C.") R18-1-501 through R18-1-525. This Notice is being issued within the overall time frame for your application.

ADEQ hereby approves your application for Approve to Construct Drinking Water Facilities under A.R.S. § 49-351. Your copy is enclosed.

This decision is an appealable agency action under A.R.S. § 41-1092. You have a right to request a hearing and file an appeal under A.R.S. § 41-1092.03(B). You must file a written Request for Hearing or Notice of Appeal within **30 days** of your receipt of this Notice. A Request for Hearing or Notice of Appeal is filed when it is received by ADEQ's Hearing Administrator as follows:

Office of Administrative Counsel
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

The Request for Hearing or Notice of Appeal shall identify the party, the party's address, the agency and the action being appealed and shall contain a concise statement of the reasons for the appeal. Upon proper filing of a Request for Hearing or Notice of Appeal, ADEQ will serve a Notice of Hearing on all parties to the appeal. If you file a timely Request for Hearing or Notice of Appeal you have a right to request an informal settlement conference with ADEQ under A.R.S. § 41-1092.06. This request must be made in writing no later than **20 days** before a scheduled hearing and must be filed with the Hearing Administrator at the above address.

Please contact Frank M. Smaila at (602) 771-4237 or fms@azdeq.gov if you have questions regarding this Notice or the Certificate of Approved to Construct.